

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

CHARLES JAMES ATCITY,

Plaintiff,

v.

No. 1:20-cv-00515-DHU-DLM

THE UNITED STATES OF AMERICA,

Defendant.

**MOTION TO POSTPONE
SETTLEMENT CONFERENCE**

Defendant, the United States of America, respectfully moves the Court for an Order postponing any settlement conference to be set in this matter for the following reasons:

1. The Court entered an Order requiring settlement letters and setting a telephonic status conference to discuss the setting of a settlement conference. (Doc. 52) The Order required the parties to submit settlement offers and responses, as well as settlement position statements to the Court on certain dates. *Id.* The parties are also required to attend a telephonic status conference on July 18, 2023 to discuss the setting of a settlement conference. *Id.*

2. The undersigned counsel for the United States entered his appearance in this matter, via a Notice of Substitution, on August 3, 2022 (Doc. 44). At that time, the United States Attorney's Office Civil Division was short-staffed due to the departure of two AUSAs, and the undersigned was taken up with a busy litigation schedule in other his assigned matters.

3. At this point, the undersigned counsel for the United States does not have settlement authority and will not have it because there is a question of the government's liability based on lack of subject matter jurisdiction since the medical providers who Plaintiff accuses of negligence were not federal employees. The United States, though the prior AUSA assigned to

defend this matter, informed Plaintiff of that fact in its Initial Disclosures, Exhibit A. See COS, Doc. 28. The government also notified Plaintiff of such in Response to Plaintiff's Motion for Partial Summary Judgement. (Doc. 38). Given that information, Plaintiff had sufficient information to either join the contactors or their employers or file separate suit against them.

4. Because Plaintiff's medical providers were independent contractors, the United States is preparing a motion to dismiss Plaintiff's claims due to the lack of subject matter jurisdiction. The Court's decision on said motion will have a direct impact on the question of liability in this matter. As a result, the United States does not have settlement authority.

5. Given the present posture of the case, the United States is not prepared to discuss settlement at this time. Any settlement conference to be set by the Court in the near future will not produce meaningful negotiations and will waste valuable time and resources of the Court and the parties.

6. Plaintiff's counsel, Joseph Romero, was contacted and opposes this motion.

WHEREFORE, based on the foregoing reasons, the United States respectfully requests that Court enter an order postponing a settlement conference until the jurisdictional issue is fully briefed and resolved.

Respectfully submitted,

ALEXANDER M.M. UBALLEZ
United States Attorney

/s/ Roberto D. Ortega 6/29/23
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 29, 2023, I filed the foregoing pleading electronically through the CM/ECF system, which caused all of the parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

/s/ Roberto D. Ortega 6/29/23

ROBERTO D. ORTEGA

Assistant United States Attorney